

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----x
STONINGTON PARTNERS, INC., a
Delaware Corporation, STONINGTON
CAPITAL APPRECIATION 1994 FUND
L.P., a Delaware Partnership
and STONINGTON HOLDINGS, L.L.C.,
a Delaware limited liability
Company,

Plaintiffs,

vs. No. 04-CV-10411
(PBS) Consolidated

DEXIA, S.A. and DEXIA BANK
BELGIUM (formerly known as
ARTESIA BANKING CORP., SA),

Defendants.

-----x
GARY B. FILLER and LAWRENCE
PERLMAN, Trustees of the TRA
Rights Trust,

Plaintiffs,

vs. No. 04-CV-10477
(PBS) Consolidated

DEXIA, S.A. and DEXIA BANK
BELGIUM (formerly known as
ARTESIA BANKING CORP., SA),

Defendants.

-----x
(Caption continues on the following page.)

Job No: 192557

ESQUIRE DEPOSITION SERVICES
212-687-8010

Page 2

1
2 -----x
3 JANET BAKER and JAMES BAKER,
4 JKBAKER LLC and JMBAKER LLC,
5 Plaintiffs,
6 vs. No. 04-CV-10501
7 (PBS) Consolidated
8 DEXIA, S.A. and DEXIA BANK
9 BELGIUM (formerly known as
10 ARTESIA BANKING CORP., SA),
11 Defendants.
12 -----x

13 VIDEOTAPED DEPOSITION OF DAVID LARUE
14 New York, New York
15 Wednesday, March 21, 2007

16
17
18
19
20 Reported by:
21 LESLIE FAGIN
22 JOB NO. 192557
23
24
25

Page 4

1
2 APPEARANCES:
3
4 BOIES, SCHILLER & FLEXNER LLP
5 Attorneys for Plaintiffs
6 255 South Orange Avenue
7 Suite 905
8 Orlando, Florida 32801
9 BY: GARY K. HARRIS, ESQ.
10 KAREN DYER, ESQ.
11
12

13 CLIFFORD CHANCE
14 Attorneys for Defendants
15 31 West 52nd Street
16 New York, New York 10019
17 BY: JEFF BUTLER, ESQ.
18 ANDREAS FRISCHKNECHT, ESQ.
19
20 ALSO PRESENT:
21 NORMAN S. ROTH
22 STEPHANIE HOLLYMAN, Videographer
23
24
25

Page 3

1
2 March 21, 2007
3 9:15 a.m.
4
5 Deposition of DAVID LARUE, held at
6 the offices of Boies, Schiller & Flexner
7 LLP, 575 Lexington Avenue, New York, New
8 York, pursuant to Notice and Federal
9 Rules of Civil Procedure, before Leslie
10 Fagin, a Notary Public of the State of
11 New York.
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 5

1
2 IT IS HEREBY STIPULATED AND AGREED,
3 by and between the attorneys for the
4 respective parties herein, that filing
5 and sealing be and the same are hereby
6 waived.

7 IT IS FURTHER STIPULATED AND AGREED
8 that all objections, except as to the
9 form of the question, shall be reserved
10 to the time of the trial.

11 IT IS FURTHER STIPULATED AND AGREED
12 that the within deposition may be sworn
13 to and signed before any officer
14 authorized to administer an oath, with
15 the same force and effect as if signed
16 and sworn to before the Court.
17
18
19
20
21
22
23
24
25

2 (Pages 2 to 5)

ESQUIRE DEPOSITION SERVICES
212-687-8010

1
2 THE VIDEOGRAPHER: Good morning.
3 Here begins videotape No. 1 in the
4 deposition of David Larue in the matter
5 of Stonington versus Dexia, Case No.
6 04-CV-10411 Consolidated, with Filler v.
7 Dexia, Case No. 04-CV-10477
8 Consolidated, with Baker v. Dexia, Case
9 No. 04-CV-10501 in the U.S. District
10 Court, District of Massachusetts.

11 This deposition is being taken at
12 Boies Schiller & Flexner in New York and
13 was made at the request of Karen Dyer of
14 the law offices of Boies Schiller in
15 Orlando, Florida.

16 The certified legal videographer is
17 Stephanie Hollyman here on behalf of
18 Esquire Deposition Services located at
19 216 East 45th Street New York.

20 Would counsel and all present
21 please identify yourselves and state
22 whom you represent.

23 MR. HARRIS: Gary Harris, Boies,
24 Schiller & Flexner for the Baker
25 plaintiffs.

1 D. Larue
2 A. No, sir. I work at the University
3 of Virginia as an associate professor, that's
4 University of Virginia, McEntyre School of
5 Commerce in Charlottesville, Virginia.

6 Q. Do you have an address on campus?
7 A. Room 251, Monroe Hall.
8 Q. Sir, do you prefer to be addressed
9 as doctor or mister today?

10 A. Either.

11 Q. Mr. Larue, I will hand you a
12 document that I will ask the court reporter
13 to mark as Larue Exhibit 1 and ask if you can
14 identify this for me.

15 (Curriculum vitae of David Larue
16 marked Larue Exhibit 1 for
17 identification.)

18 A. Yes, this appears to be a printout
19 of the University's website description of --
20 brief description of my background.

21 Q. You have seen this website before?
22 A. I have.

23 Q. To the best of your knowledge, is
24 it accurate?

25 A. I haven't looked at it in quite

1 D. Larue

2 MS. DYER: Karen Dyer, Boies,
3 Schiller & Flexner for the Baker
4 plaintiffs.

5 MR. BUTLER: Jeff Butler, Clifford
6 Chance, representing Dexia Bank Belgium.

7 MR. FRISCHKNECHT: Andreas
8 Frischknecht, also of Clifford Chance,
9 representing Dexia Bank Belgium.

10 D A V I D L A R U E, called as a
11 witness, having been duly sworn by a
12 Notary Public, was examined and testified
13 as follows:

14 EXAMINATION BY

15 MR. HARRIS:

16 Q. Could you please state your full
17 name and business address for the record?

18 A. My name is David Wayne Larue. My
19 address is 1358 Hunters Field Close, Keswick
20 Virginia 22947.

21 Q. And what business is located there?

22 A. That's my home residence. It's
23 also where I have my home office.

24 Q. Is that the only place at which you
25 are employed?

1 D. Larue

2 sometime, but I have every reason to believe
3 it would be accurate.

4 Q. Did you participate in preparing
5 Larue Exhibit 1?

6 A. I did, yes.

7 Q. Did you review it prior to its
8 being posted on the University of Virginia's
9 website?

10 A. I don't recall whether I did or
11 not, it's been a while.

12 Q. Is it fair to say in this
13 description of yourself and your professional
14 activities, that it identifies those
15 experiences in your career that you want
16 people to know about?

17 MR. BUTLER: Objection to form.

18 A. It includes excerpts from my
19 resume.

20 Q. How did you decide which excerpts
21 from your resume to post on the University of
22 Virginia's website?

23 A. The University for all faculty
24 members they typically have a brief summary
25 of your professional activities, background and

Page 10

Page 12

1 D. Larue
 2 then selected publications, so whatever their
 3 format was that's the format that was
 4 followed here.

5 Q. But, perhaps my question wasn't
 6 clear. You said it is excerpts of your
 7 resume?

8 A. Yes, sir.

9 Q. How did you decide which portions
 10 of your professional activities did you -- to
 11 list on the University of Virginia website?

12 A. Well, the website, there is a page
 13 restriction of some sort, so you just provide
 14 your resume and I think maybe a couple of
 15 descriptions. They make a decision as to
 16 what to put up there and whatnot.

17 Q. So you didn't decide which
 18 activities to include within the website from
 19 your resume?

20 A. Gosh, that's a -- it's been a
 21 while. I just gave them a summary of my
 22 background and a copy of my resume, they made
 23 a decision as to how to format that and what
 24 information to include that was consistent
 25 with the information that had been presented

1 D. Larue
 2 for identification.)
 3 A. This is, reading from the cover
 4 page, this is the Form 10-K filed by
 5 Microstrategy Corporation with the SEC and it
 6 appears to be for the fiscal year ending
 7 December 31, 2006.

8 Q. And are you currently a director of
 9 Microstrategy Incorporated?

10 A. Yes, sir, I'm an outside director.

11 Q. You were a director at the time
 12 that Larue Exhibit 2 was filed with the SEC?

13 A. Yes, sir, I was.

14 Q. Did you sign Larue Exhibit 2?

15 A. Yes, sir.

16 Q. And prior to signing it, did you
 17 read it?

18 A. Yes, sir.

19 Q. Did you understand it?

20 A. Yes, sir.

21 Q. Was there anything in there you
 22 didn't understand?

23 A. I don't recall that there was.

24 It's a lengthy document.

25 Q. You would, as a director, if there

Page 11

Page 13

1 D. Larue
 2 for other faculty members.

3 Q. Did that summary that you provided
 4 include a summary of your professional
 5 activities?

6 A. I see here that it does, yes.

7 Q. And it does not include all of your
 8 professional activities, correct?

9 A. That's correct.

10 Q. How did you decide which
 11 professional activities to include in your
 12 summary and which to not include?

13 MR. BUTLER: I object. I think he
 14 answered that question.

15 You can answer.

16 A. I don't recall.

17 Q. Are you a certified public
 18 accountant?

19 A. No.

20 Q. Are you a certified fraud examiner?

21 A. No, sir.

22 Q. Let me hand you a document which we
 23 will mark as Larue Exhibit 2 and ask if you
 24 can identify it for me.

25 (Form 10-K marked Larue Exhibit 2

1 D. Larue
 2 was something in the 10-K you didn't
 3 understand, you would ask someone to explain
 4 it to you?

5 A. If I was concerned about it, yes, I
 6 would.

7 Q. Do you recall asking anybody to
 8 explain anything in Larue Exhibit 2 to you
 9 before you signed it?

10 A. Well, that's the -- we have audit
 11 committee meetings and board of directors
 12 meetings over which we go through drafts of
 13 the 10-K.

14 During those meetings, we discuss
 15 various members of the board and the audit
 16 committee discuss various issues with
 17 management, with the CEO, with external
 18 auditors with the internal control folks and
 19 we discuss a variety of issues. The meeting
 20 pretty much lasts the better part of the day.

21 Q. And so prior to your signature, you
 22 had reviewed drafts of the 10-K?

23 A. That's correct.

24 Q. And you had an opportunity to fully
 25 understand it, correct?

4 (Pages 10 to 13)

ESQUIRE DEPOSITION SERVICES
 212-687-8010

2dfd6da5-8e66-4d39-80f9-bae02f49a691

Page 14

Page 16

1 D. Larue

2 A. I had an opportunity to understand
 3 it to the degree that I needed to understand
 4 it, yes.

5 Q. If you turn to what is labeled at
 6 the top page 58 of 96, but, internally, it is
 7 page 51 of Larue Exhibit 2?

8 A. Yes, sir, I'm there.

9 Q. Do you know what this is?

10 A. This is the report of the
 11 independent registered public accounting
 12 firm.

13 Q. And is it your understanding that
 14 such a report is required with regard to all
 15 public companies?

16 A. Public companies that are required
 17 to file with the SEC, yes.

18 Q. So this is not an unusual document
 19 for you to have seen?

20 A. Not at all.

21 Q. Is this type of document that is
 22 reflected on pages 51 and 52 of the internal
 23 and 58 and 59 of '96 have a shorthand name in
 24 the profession?

25 A. This is the auditor's report.

1 D. Larue

2 Q. Have you ever performed an audit
 3 relating to a public company that is required
 4 to file with the SEC?

5 A. Are you asking me did I ever
 6 participate in the performance of an audit
 7 under GAAP for the purposes of preparing
 8 financial statements to be filed with the
 9 SEC?

10 Q. Yes.

11 A. No, I haven't.

12 Q. Have you ever conducted a fraud
 13 examination?

14 MR. BUTLER: Objection to form.

15 A. You would have to define fraud
 16 examination for me.

17 In connection with some of the work
 18 that I have done as an expert witness, I have
 19 conducted a number of forensic analyses
 20 primarily in the conduct of civil tax
 21 disputes or civil issues dealing with the
 22 application of generally accepted accounting
 23 principles or economic analysis or other
 24 things.

25 In one case, I did -- in one case,

Page 15

Page 17

1 D. Larue

2 Q. The auditor's report?

3 A. The auditor's opinion.

4 Q. Would you prefer I refer to this as
 5 an auditor's report or auditor's opinion?

6 A. Auditor's report is fine.

7 Q. If I use the term auditor's report
 8 throughout the day, you will understand that
 9 I am referring to the type of document that
 10 is reflected on internal pages 51 and 52 of
 11 Larue Exhibit 2?

12 A. That's correct.

13 Q. And is the -- Microstrategy's
 14 independent registered public accounting firm
 15 for the year ending December 31, 2006 was
 16 Graham Thorton LLP, correct?

17 A. Yes, sir.

18 Q. And they performed certain audit
 19 procedures prior to issuing their report,
 20 correct?

21 A. Yes, sir.

22 Q. Have you ever signed an auditor's
 23 report with regard to a public company that
 24 is required to file with the SEC?

25 A. No, sir.

1 D. Larue

2 the defendant was charged with criminal tax
 3 conspiracy, so forensic analysis, yes, I've
 4 conducted many of those.

5 Q. Have you ever conducted a forensic
 6 analysis outside of the conduct of a tax
 7 investigation?

8 A. The litigation involved tax issues.
 9 My forensic analysis typically involved
 10 economic or financial analyses or analyses
 11 that were designed to determine the
 12 application of generally accepted accounting
 13 principles.

14 Q. Have you ever, just so it is clear,
 15 have you ever conducted a forensic
 16 examination in any context in which the
 17 issues of tax were not present?

18 MR. BUTLER: I object to the form
 19 of the question.

20 You can answer, sir.

21 A. No, I believe in all of the
 22 expert witness engagements I've been
 23 involved, in the issue in dispute ultimately
 24 was a tax issue, so that's outside of the
 25 classroom, inside the classroom we use

5 (Pages 14 to 17)

ESQUIRE DEPOSITION SERVICES
 212-687-8010

2dfd6da5-8e66-4d39-80f9-bae02f49a691

Page 18

Page 20

1 D. Larue
 2 business cases and so forth.

3 Q. So with regard to non-tax related
 4 forensics examination, it's fair to say that
 5 your experience is limited to classroom, is
 6 that correct?

7 MR. BUTLER: Objection to form.

8 A. I wouldn't agree with that. The
 9 litigation I was involved in had tax issues
 10 that were being litigated. My role in many
 11 of these cases was to opine as to whether or
 12 not generally accepted accounting principles
 13 were applicable or what those principles were
 14 or to do economic analyses or financial
 15 analyses. My role was not to opine on tax
 16 ramifications.

17 Q. Mr. Larue, have you ever conducted
 18 a forensic examination other than as an
 19 expert witness?

20 A. Some time back, I did some due
 21 diligence work in connection with mergers and
 22 acquisitions.

23 Q. And what type of due diligence work
 24 did you do?

25 A. Looking through financial

1 D. Larue
 2 A. That may be true. Forensic
 3 examinations are part of the due diligence
 4 process, certainly not the totality.
 5 Q. And are there any qualifications
 6 that are required to conduct the type of
 7 forensic examinations that you have described
 8 in the context of due diligence for mergers
 9 and acquisitions?

10 A. When you say, qualifications, I'm
 11 not sure what you mean.

12 Q. Could I do it?

13 A. Do you have a finance accounting
 14 and economics background?

15 Q. Sure.

16 A. If you have the knowledge to be
 17 able to conduct those kinds of analyses, I
 18 think that's what people are concerned about.

19 Q. Okay. So there is no particular
 20 degree or certification that is required that
 21 conduct the type of forensic examination that
 22 you conducted in the context of due diligence
 23 with regard to mergers and acquisitions,
 24 correct?

25 A. When you say, degree required, do

Page 19

Page 21

1 D. Larue
 2 statements, looking at books and records.

3 Q. And was that -- is it fair to say
 4 your understanding with regard to most
 5 mergers and acquisitions, the buyer and the
 6 seller conduct due diligence?

7 A. Yes, sir, they normally do.

8 Q. Was your due diligence the ordinary
 9 type of due diligence one does with respect
 10 to mergers and acquisitions?

11 A. Ordinary due diligence. I would
 12 say it's customary to do a due diligence
 13 analysis of the financial statements and
 14 books and records and old tax returns and so
 15 forth of the buyer and the seller.

16 Q. Would you consider the due
 17 diligence you did to be a forensic
 18 examination?

19 A. I think I would put that label on
 20 it, yes, sir.

21 Q. So that the investment bankers who
 22 do due diligence in mergers and acquisitions
 23 in your mind do forensic examination of
 24 account statements, is that correct?

25 MR. BUTLER: Objection to form.

1 D. Larue
 2 you mean required in a legal sense?

3 Q. Well, it is my understanding, and I
 4 don't know this for sure and we will see this
 5 for sure, can anyone perform brain surgery?

6 A. No, they can't.

7 MR. BUTLER: Objection. This
 8 doesn't make any sense for me. Your
 9 questioning is getting a little bit
 10 ridiculous, but go ahead.

11 Q. And why do you believe that not
 12 everyone can do brain surgery?

13 A. Well, it requires, obviously,
 14 specialized background training and
 15 experience.

16 It also requires, I would guess,
 17 understate law, it requires that you have the
 18 appropriate medical licenses.

19 Q. And is it your understanding that
 20 understate law, certain licenses are required
 21 to perform audits of public companies?

22 A. To express an opinion on the
 23 financial statements under generally accepted
 24 accounting principles, you're generally
 25 required to be a CPA.

6 (Pages 18 to 21)

ESQUIRE DEPOSITION SERVICES
 212-687-8010

2dfd6da5-8e66-4d39-80f9-bae02f49a691

Page 22

1 D. Larue
 2 Q. And you are not, is that correct?
 3 A. That's correct.
 4 Q. And so in the context -- is there
 5 any license that is required by the State, to
 6 your knowledge, to be able to perform a
 7 forensic examination of the type that you
 8 have described with regard to due diligence
 9 in the context of mergers and acquisitions?
 10 MR. BUTLER: Can you clarify what
 11 state you're asking about?
 12 Q. Any.
 13 A. To perform a forensic analysis?
 14 Q. Of the type that you've described
 15 in the context of due diligence work for
 16 mergers and acquisitions.
 17 A. I don't believe there is any formal
 18 legal requirement for a particular
 19 certification or license generally.
 20 Q. Now, other than -- have you ever
 21 advised a public company that is required to
 22 file with the SEC regarding revenue
 23 recognition under generally accepted
 24 accounting principles?
 25 A. In my capacity as chairman of the

Page 24

1 D. Larue
 2 A. Not -- let me go back to your
 3 predicate.
 4 In an academic context, I would
 5 disagree with that. In some of the training
 6 programs that I have taught, the people who
 7 are in those training programs are partners
 8 or managers or senior managers who are
 9 working with clients. The questions that
 10 they typically ask me are sometimes academic
 11 questions, but there are other times -- I
 12 have a client who has a particular situation.
 13 Let me describe the facts to you and could I
 14 get your advice on how this should be
 15 handled?
 16 So in that sense, the advice that I
 17 render is not to them, is not dealing with
 18 academic issues. It's dealing with
 19 practical, real world issues that these
 20 individuals are facing.
 21 Q. To your knowledge, did the public
 22 company authorize those questioners to seek
 23 your advice?
 24 A. I have no knowledge one way or the
 25 other. Whoever the public company would have

Page 23

1 D. Larue
 2 audit committee for Microstrategy, I'm
 3 involved in the oversight process and work
 4 with the CFO, the director of internal
 5 controls, with management, the other members
 6 of the audit committee, with the external
 7 auditors in terms of examining GAAP issues as
 8 they apply, among other things, to revenue
 9 recognition.
 10 Q. Other than Microstrategy, have you
 11 ever provided advice to a public company
 12 required to file with the SEC regarding
 13 revenue recognition under generally accepted
 14 accounting principles?
 15 A. Not directly to a public company,
 16 but certainly in conjunction with work that I
 17 have done for some of the public accounting
 18 firms.
 19 I'm always asked for my advice on
 20 various issues that the participants in my
 21 classes are involved with.
 22 Q. But that's in the general context
 23 of providing advice under an academic
 24 structure. I'm talking about with regard to
 25 a particular public company.

Page 25

1 D. Larue
 2 been, I wouldn't have been notified as to the
 3 identity of the public company.
 4 Q. So, to your knowledge, other than
 5 Microstrategy, you cannot identify a single
 6 public company that you have provided advice
 7 to regarding revenue recognition under GAAP,
 8 correct?
 9 A. Not that I recall.
 10 Q. And is it fair to say that no
 11 public company has ever retained you to
 12 provide for the purpose of providing revenue
 13 recognition advice?
 14 A. Again, as chairman of the audit
 15 committee, that's part of my oversight
 16 responsibilities, so in that capacity, yes.
 17 Q. So as the chairman of the audit
 18 committee of Microstrategy?
 19 A. That's correct.
 20 Q. Other than Microstrategy, have you
 21 ever been retained by a public company to
 22 provide it with advice regarding revenue
 23 recognition under generally accepted
 24 accounting principles?
 25 A. No, sir.

7 (Pages 22 to 25)

ESQUIRE DEPOSITION SERVICES
 212-687-8010

Page 26

1 D. Larue
 2 Q. Looking at Larue Exhibit 1, it
 3 identifies you as an associate professor of
 4 commerce?
 5 A. That's correct.
 6 Q. What is an associate professor?
 7 A. I am an associate professor with
 8 tenure at the University of Virginia.
 9 Q. What does associate professor --
 10 A. It's a rank.
 11 Q. Is it the highest range?
 12 A. No, sir.
 13 Q. So the University of Virginia has
 14 not bestowed upon you its highest rank,
 15 correct?
 16 A. That's correct. The -- I'm not a
 17 full professor. I've never put in my papers
 18 to be promoted for full professor. It's an
 19 application process that's initiated by the
 20 faculty member.
 21 Q. So is taking a certified public
 22 accountancy exam, correct?
 23 A. I'm sorry.
 24 Q. You don't become a certified public
 25 accountant unless you take an exam, correct?

Page 28

1 D. Larue
 2 on, some involved generally accepted
 3 accounting principles and when you say
 4 revenue recognition, there are a lot of
 5 different issues that are rolled up into the
 6 matters that I was testifying on.
 7 Q. And perhaps my question wasn't
 8 clear. Let me make it clear.
 9 Have you ever provided expert
 10 testimony regarding revenue recognition under
 11 generally accepted accounting principles?
 12 A. I have testified and an expert and
 13 been recognized as an expert on generally
 14 accepted accounting principles as they
 15 applied to accounting issues, some of which
 16 may have been revenue recognition issues.
 17 Q. I'm asking you which ones.
 18 A. I need to look at my resume.
 19 Q. If any.
 20 A. I don't think I have a listing of
 21 all of the cases.
 22 One would be the Tyson Food case
 23 that had to do with the application of
 24 accounting principles.
 25 Q. What aspect of revenue recognition

Page 27

1 D. Larue
 2 A. Correct.
 3 Q. You have to apply to become a
 4 certified public accountant?
 5 A. Correct.
 6 Q. And many people who apply to become
 7 certified public accountants don't become
 8 certified public accountants, correct?
 9 A. I would suspect that's correct.
 10 Q. Mr. Larue, have you ever testified
 11 as an expert regarding auditing standards?
 12 A. Regarding auditing standards, I
 13 don't believe so.
 14 Q. Have you ever testified as an
 15 expert regarding generally accepted
 16 accounting principles?
 17 A. Yes, sir.
 18 Q. Have you ever testified as an
 19 expert regarding revenue recognition under
 20 generally accepted accounting principles?
 21 A. I would say yes.
 22 Q. In what cases did you do that?
 23 A. I would need to look at my resume.
 24 Q. Okay. You don't recall right now?
 25 A. The various cases that I've worked

Page 29

1 D. Larue
 2 did you provide an expert testimony?
 3 A. That had to do with -- let me think
 4 about that. That actually had more to do
 5 with the cost accounting principles used by
 6 Tyson Foods in computing their revenue, in
 7 computing their gross income.
 8 Q. I'm a little confused.
 9 Does cost accounting relate to
 10 revenue recognition?
 11 A. It relates to the recognition of
 12 income or of net income.
 13 Q. I understand that, but net income
 14 is different than revenue, correct?
 15 A. I see what you're getting at.
 16 Q. Is that correct?
 17 A. Yes.
 18 Q. So I'm clear, I'm asking about
 19 revenue.
 20 You understand the term in
 21 generally accepted accounting principles of
 22 revenue?
 23 A. Yes, sir.
 24 Q. It is not net income, is it?
 25 A. No, sir.

8 (Pages 26 to 29)

ESQUIRE DEPOSITION SERVICES
 212-687-8010

2dfd6da5-8e66-4d39-80f9-bae02f49a691

Page 30

Page 32

1 D. Larue

2 Q. And cost accounting has nothing to
 3 do with recognition of revenue under
 4 generally accepted accounting principles,
 5 correct?

6 A. Yes. Those are two different
 7 issues.

8 Q. Let's go back.

9 Have you ever provided expert
 10 testimony with regard to revenue recognition
 11 under generally accepted accounting
 12 principles?

13 A. I don't recall.

14 Q. You don't know one way or the
 15 other?

16 A. When you talk about generally
 17 accepted accounting principles, you have a
 18 number of -- in the issues I've dealt with,
 19 there are a number of issues that have
 20 converged that deal with basically the
 21 determination of net income.

22 Q. Well, and that income is -- is the
 23 bottom line on an income statement, correct?

24 A. That's correct.

25 Q. What's the top line?

1 D. Larue

2 between the enterprise and certain parties
 3 related to that enterprise.

4 This case also involved an opinion
 5 on the timing of the recognition of cost of
 6 goods sold and net income.

7 Q. Other than the Proctor & Gamble
 8 testimony, have you ever provided expert
 9 testimony with regard to revenue recognition,
 10 the top line on an income statement under
 11 generally accepted accounting principles?

12 A. I don't believe so. I don't
 13 recall.

14 Q. Mr. Larue, you previously testified
 15 that in certain of your work as an expert,
 16 you have conducted forensic examinations,
 17 correct?

18 A. Yes, sir.

19 Q. Have any of those forensic
 20 examinations related to whether or not
 21 certain dollar amounts were properly
 22 classified as revenues rather than capital
 23 assets?

24 A. Revenues classified -- say that
 25 again. Certain dollar amounts classified as

Page 31

Page 33

1 D. Larue

2 A. Revenue.

3 Q. On that top line, have you ever
 4 provided expert testimony with regard to the
 5 top line of the income statement, which is
 6 titled Revenue?

7 A. In at least one case, and that
 8 would be -- it's listed in my exhibit. I
 9 gave a deposition. I have not testified at
 10 trial in the Proctor & Gamble case.

11 Q. Do you have a copy of that
 12 deposition?

13 A. I may have a copy.

14 Q. Would you be kind enough to provide
 15 it to me?

16 MR. BUTLER: You don't have to
 17 answer that. It has never been
 18 requested before. We will take your
 19 request under advisement.

20 Q. What was your testimony with regard
 21 to revenue recognition with regard to Proctor
 22 & Gamble?

23 A. That case involved the appropriate
 24 accounting treatment of the timing of
 25 revenues recognized on certain transactions

1 D. Larue

2 revenues rather than capital assets?

3 Q. Yes.

4 A. I had one case where the issue was
 5 expenses versus capital assets. I don't
 6 recall.

7 Q. Nothing comes to mind now?

8 A. Again, in some of these cases, I
 9 did an economic analysis to determine
 10 revenue, how much revenue was economically
 11 realized. I don't recall whether I opined
 12 whether or not that revenue would have been
 13 recognized under GAAP.

14 Q. In any of the forensic examinations
 15 that you have engaged in as an expert, did
 16 any involve dollar amounts that were claimed
 17 as revenues rather than as expenses?

18 A. In some of the cases there was a
 19 claim that the enterprise had revenues that,
 20 in fact, they didn't have, but in terms of
 21 reclassifying expenses as revenues, I don't
 22 recall specifically that I've ever addressed
 23 that issue in an expert witness report.

24 Q. What about reclassifying revenues
 25 as expenses?

9 (Pages 30 to 33)

ESQUIRE DEPOSITION SERVICES
 212-687-8010

2dfd6da5-8e66-4d39-80f9-bae02f49a691

1 D. Larue
 2 A. Reclassifying revenues as expenses,
 3 I don't recall that I've ever addressed that
 4 issue in a forensic analysis. I may have,
 5 but I don't recall that I did.
 6 Q. Mr. Larue, how does one -- how
 7 should a public company that files with the
 8 SEC account in its financial statements for a
 9 fraudulent transaction?
 10 MR. BUTLER: Objection to form.
 11 A. That depends on the facts and
 12 circumstances. You would have to be a lot
 13 more specific in terms of what kind of a
 14 transaction you're referring or the
 15 materiality, what kind of -- at what level
 16 was the fraud committed, what type of fraud
 17 was it, whether or not a restatement of
 18 earnings or some dollar amount in the
 19 financial statements themselves should be
 20 reclassified or omitted or whether or not
 21 there should be disclosure. That's a
 22 statement that you really can't answer in the
 23 abstract.
 24 Q. Let me ask you -- let me try to
 25 fill in some of those details.

1 D. Larue
 2 Consider the following
 3 hypothetical: Microstrategy is a software
 4 vendor, is that correct?
 5 A. That's correct.
 6 Q. Microstrategy's chairman enters
 7 into an agreement in which his brother will
 8 give Microstrategy \$3 million and, in
 9 exchange, Microstrategy, on paper, says we
 10 will provide you with licensing -- we will
 11 provide you with our software and your
 12 employees will work on that software and we
 13 will get 50 percent of your net profits and
 14 that's what the document reflects, but the
 15 president of Microstrategy and his brother
 16 agree orally that the brother will not have a
 17 company, there will be no employees and there
 18 will be no expectation by Microstrategy
 19 because there are no employees and the
 20 brother's company will do nothing, that there
 21 will never be any future revenues from the
 22 brother's company.
 23 How should Microstrategy account
 24 for that transaction?
 25 MR. BUTLER: Objection to form.

1 D. Larue
 2 If you need to hear it again, we
 3 will have it reread. It's a long
 4 question.
 5 A. Let me see if I can distill.
 6 Microstrategy has received \$3 million free
 7 and clear?
 8 Q. In reality, yes.
 9 A. In reality, yes.
 10 In exchange for licenses for which
 11 Microstrategy has no future obligation to
 12 perform any additional services?
 13 Q. Correct.
 14 A. The \$3 million is received by the
 15 brother of the CEO of Microstrategy?
 16 MR. BUTLER: I'm not sure that's
 17 right. The brother is paying
 18 Microstrategy.
 19 A. I'm sorry, the brother pays
 20 Microstrategy \$3 million, Microstrategy has
 21 the \$3 million, doesn't have to give it back?
 22 Q. Correct.
 23 A. And the brother can take that
 24 license and pretty much do with it what he
 25 chooses to do with it, he owns the license.

1 D. Larue
 2 Q. There is a written document that
 3 controls what he can and cannot do with that.
 4 MR. BUTLER: You need to clarify
 5 the hypothetical. He is asking, does he
 6 own the license or not?
 7 Q. He owns the license with certain
 8 limitations as to use?
 9 A. What is that license worth?
 10 Q. I don't know.
 11 A. If the license is worth \$3 million
 12 and he paid \$3 million for it, whether or not
 13 the brother actually makes a profit on his
 14 own accord exploiting the license agreement,
 15 I don't believe is material to Microstrategy.
 16 The issue of Microstrategy as to whether or
 17 not it has revenue.
 18 Q. So how would Microstrategy -- how
 19 should Microstrategy account for that
 20 transaction?
 21 A. Well, again, assuming there is no
 22 obligation, there are no side agreements, it
 23 appears to me from what you said and there
 24 could be other qualifying facts and
 25 circumstances, but it appears that

Page 38

1 D. Larue
 2 Microstrategy has derived \$3 million worth of
 3 revenue from a party related to its CEO.
 4 Q. And so how should -- what is the
 5 accounting entry for that transaction?
 6 A. That would be a debit to cash and a
 7 credit to revenue from a related party.
 8 Q. And would Microstrategy be
 9 obligated in those circumstances to disclose
 10 that related party transaction?
 11 A. I believe under FAS 57, certainly
 12 Michael Saler, the CEO of Microstrategy, is a
 13 related party, he is the majority
 14 shareholder, he is also the CEO.
 15 I believe members of the immediate
 16 family to the CEO would be considered to be
 17 related parties. That amount would normally
 18 be disclosed in the footnotes to financial
 19 statements and possibly separately stated.
 20 Q. Now, let me change the hypothetical
 21 slightly.
 22 It is the exact same fact pattern,
 23 only this time, the person agreeing with
 24 Microstrategy's CEO is not his brother. He
 25 is unrelated to the CEO of Microstrategy and

Page 40

1 D. Larue
 2 A. I need more facts and
 3 circumstances.
 4 Q. What fact would you need?
 5 A. One of the requirements under GAAP
 6 that the software actually be delivered, was
 7 the software delivered?
 8 Q. Yes.
 9 A. If the amount that was paid by the
 10 unrelated party was in the form of an account
 11 receivable, was collection of that account
 12 receivable probably based on an analysis of
 13 all of the underlying facts and
 14 circumstances? Was the amount and appears to
 15 be here, the \$3 million fixed and
 16 determinable, was there persuasive evidence
 17 of an agreement?
 18 So those are generally the
 19 requirements of SOP 97-2. Once those
 20 criteria are satisfied, then revenue
 21 recognition would generally be appropriate,
 22 again, assuming this is a license agreement
 23 and not something else.
 24 Q. How would you determine whether it
 25 was something else?

Page 39

1 D. Larue
 2 has no interest in Microstrategy.
 3 How then would Microstrategy
 4 account for that transaction?
 5 A. Again, assuming this is a licensing
 6 agreement and -- assuming that this is an
 7 outright sale of a license and there is
 8 nothing else going on, then, of course,
 9 Microstrategy would have \$3 million worth of
 10 revenue once it satisfied all of the criteria
 11 set forth by GAAP, generally under SOP 97-2.
 12 Q. On the facts that I have
 13 identified, do you have an opinion as to what
 14 the proper accounting for that transaction
 15 should be by Microstrategy?
 16 A. I believe I just stated that. If
 17 Microstrategy sold a license to an unrelated
 18 party and it met the criteria under GAAP for
 19 revenue recognition, Microstrategy would
 20 report the recognition of revenue in the
 21 period in which all of those criteria have
 22 been satisfied.
 23 Q. Do the facts, as you understand it,
 24 from this hypothetical, meet the criteria for
 25 revenue recognition under GAAP?

Page 41

1 D. Larue
 2 A. I would begin by looking at the
 3 terms of the agreement between these two
 4 parties.
 5 Q. Did you look at the terms of the
 6 agreement between Lernout and Hauspie and any
 7 LDC?
 8 A. I don't recall that I did.
 9 Q. Why not?
 10 A. I was asked to make certain factual
 11 assumptions about the facts in this case and
 12 I made those assumptions, stated those
 13 assumptions in my report and based my opinion
 14 on those assumptions.
 15 Q. If those assumptions were to
 16 change, your opinion may or may not change,
 17 correct?
 18 A. If the assumptions didn't bear out,
 19 then there is a possibility that my opinion
 20 might change.
 21 Q. Now, in opining about -- did you
 22 opine about the proprietary of revenue
 23 recognition, correct?
 24 MR. BUTLER: Objection to form.
 25 There was not an opinion about whether

11 (Pages 38 to 41)

ESQUIRE DEPOSITION SERVICES
 212-687-8010

1 D. Larue
 2 revenue recognition was --
 3 MR. HARRIS: Are you testifying
 4 today or is Mr. Larue?
 5 MR. BUTLER: Your question assumes
 6 a fact that is not true.
 7 MR. HARRIS: You object and I
 8 ignore you and we move forward.
 9 MR. BUTLER: Were you at the
 10 deposition yesterday? I know that's not
 11 your firm's policy.
 12 MR. HARRIS: You are either going
 13 to play by the rules or we will
 14 terminate this deposition until you're
 15 instructed to play by the rules. We
 16 will not have you giving long speeches.
 17 We are going to have you objecting to
 18 form. If you believe my question is
 19 improper based on its form, okay.
 20 MR. BUTLER: I know you're new to
 21 this to case. I will make my
 22 objections.
 23 MR. HARRIS: I'm not new to the
 24 practice of law.
 25 MR. BUTLER: Sir, just ask your

1 D. Larue
 2 A. I don't believe I opined that it
 3 was not improper.
 4 I believe I opined that it was not
 5 clearly improper based on one particular
 6 element of the underlying facts.
 7 Q. Now, with regard to Larue Exhibit
 8 2, if you could pick that up and I direct
 9 your attention to the financial statements in
 10 Larue Exhibit 2.
 11 A. Do you have a page?
 12 Q. Sure. We could begin on, for
 13 example, page 63 of 96, and that particular
 14 page of Larue Exhibit 2 does not bear an
 15 internal page number.
 16 This is titled, this table,
 17 Microstrategy Incorporated Consolidated
 18 Statement of Operations, correct?
 19 A. Yes, sir.
 20 Q. It also is referred to sometimes as
 21 an income statement, correct?
 22 A. Yes, sir.
 23 Q. And when you signed Larue Exhibit
 24 2, would you have been satisfied if your
 25 accountant told you that the revenues

1 D. Larue
 2 questions. I made my objection.
 3 MR. HARRIS: I've discussed with
 4 you what is an appropriate and what is
 5 not an appropriate objection.
 6 MR. BUTLER: Thank you for the
 7 education. Just ask this witness a
 8 question.
 9 MR. HARRIS: Can you read back the
 10 question.
 11 (Record read.)
 12 Q. Have you opined with regard to the
 13 proprietary of revenue recognition by L&H in
 14 this action?
 15 A. In my report, based on the
 16 assumptions that I was given, I opined that
 17 revenue recognition for particular reasons
 18 was not clearly improper.
 19 Q. Did you not opine that it was
 20 proper?
 21 A. I did not.
 22 Q. And you did not opine that it was
 23 not improper, correct?
 24 MR. BUTLER: I object to the form
 25 of the question.

1 D. Larue
 2 reflected in Microstrategy's incorporated
 3 maybe improper, but they're not clearly
 4 improper?
 5 MR. BUTLER: Objection to the form
 6 of the question.
 7 You can answer.
 8 A. Would I have objected to the
 9 financial statement?
 10 Q. Would you have been satisfied as a
 11 director of Microstrategy?
 12 A. I would have to know much more.
 13 Q. Would you have signed Larue Exhibit
 14 2 if you understood that the revenues
 15 reflected in Microstrategy's income statement
 16 in Larue Exhibit 2 were improper, but were
 17 not clearly improper?
 18 A. I believe that all of these
 19 revenues on these statements are clearly
 20 proper.
 21 If the auditors had informed me or
 22 that the CFO had informed me that some of the
 23 revenue recognition may have been improper,
 24 clearly, I would need to know more facts and
 25 circumstances in order to make a

1 D. Larue
 2 determination as to whether or not it would
 3 be appropriate for me, not only to sign the
 4 return, but as chairman of the audit
 5 committee to recommend to the board of
 6 directors that they sign the return.

7 Q. Perhaps you didn't hear my
 8 question. Let me make sure you do or maybe
 9 my question wasn't clear.

10 Would you have signed Larue Exhibit
 11 2 if you were told that the amount of revenue
 12 reflected in Microstrategy's income statement
 13 in Larue Exhibit 2 was improper, but it was
 14 not clearly improper?

15 A. Again, I would need to know more.

16 Q. And it is your understanding as a
 17 director of Microstrategy that it is
 18 permissible for Microstrategy to file with
 19 the SEC, financial statements that it knows
 20 are improper, but not clearly improper?

21 A. That's not my understanding.

22 Q. So is it your understanding that
 23 Microstrategy cannot file with the SEC
 24 financial statement that it knows are
 25 improper?

1 D. Larue
 2 it won't be clear.
 3 Q. Let me restate it. I would like
 4 you to -- the following hypothetical,
 5 Microstrategy's CEO enters into an agreement
 6 in writing with an unrelated person who is
 7 the president of a corporation such that the
 8 corporation named Johnny --
 9 MR. BUTLER: The corporation's name
 10 is Johnny?
 11 MR. HARRIS: Yes.

12 Q. Johnny provides Microstrategy with
 13 \$3 million cash and Microstrategy delivers a
 14 software packages pursuant to the written
 15 agreement that provides that Microstrategy
 16 will be -- will receive 50 percent of
 17 Johnny's net income over the next three
 18 years.

19 Johnny's president also tells
 20 Microstrategy that he intends never to have
 21 any employees and does not intend to develop
 22 any products based upon Microstrategy's
 23 software. Okay?

24 MR. BUTLER: One question: What is
 25 the nature of the written agreement

1 D. Larue
 2 A. Again, it's difficult to answer
 3 that question simply because there are not
 4 enough facts and circumstances that you've
 5 given me.

6 What is the materiality of the
 7 dollar amount? What account balances does it
 8 effect? Why is it improper? What is the
 9 reason for its being classified or considered
 10 to be improper? Who thinks it's improper?
 11 Does management think it's improper? Does
 12 the auditors think it's improper? Do they
 13 have different opinions on the propriety of a
 14 particular treatment of a particular item?
 15 Is this a recurring item? Is it something
 16 that will reverse next year?

17 There are an enormous number of
 18 facts and circumstances that would have to be
 19 examined and addressed. You can't say in the
 20 abstract -- I can't answer that question in
 21 the abstract definitively.

22 Q. Let's go back to our hypothetical.

23 Do you have it in mind?

24 MR. BUTLER: Object to the form.

25 The hypothetical evolved over time, so

1 D. Larue
 2 between the CEO of Microstrategy and
 3 Johnny?

4 Q. The written agreement is between
 5 Microstrategy and Johnny.

6 I believe that you said
 7 Microstrategy in that situation would book
 8 that transaction as \$3 million to cash as a
 9 debit and \$3 million to revenue, correct?

10 A. Based on the assumptions that
 11 you've given me and assuming no other
 12 relevant facts and circumstances, yes, sir.

13 Q. And there would be no requirement
 14 to disclose any related party transaction,
 15 correct?

16 A. You defined the purchaser as being
 17 an unrelated party, so assuming your
 18 definition comports with GAAP, then I would
 19 agree with that.

20 Q. Now, let me add a fact to the
 21 transaction. The president of Johnny says to
 22 Microstrategy, this sounds terrific to me, I
 23 just don't have \$3 million, I have 72,000.
 24 Do you think I could borrow it someplace and
 25 Microstrategy's president says, I think you

Page 50

1 D. Larue
 2 might be able to borrow it from Z Bank.
 3 Okay. The president of Johnny goes to Z
 4 Bank, Z Bank says to him, here is \$3 million,
 5 sounds good to me. He comes back with the
 6 money, gives it to Microstrategy.

7 How would Microstrategy account for
 8 that transaction?

9 A. Again, assuming there are no side
 10 agreements or any other facts and
 11 circumstances from Microstrategy's point of
 12 view, they received \$3 million in cash that
 13 they're not obligated to pay back in exchange
 14 for a license agreement that requires no
 15 substantial future services from an unrelated
 16 party. They would report that as revenue.

17 Q. How about -- let me change the
 18 facts now.

19 The president of Johnny says to the
 20 president of Microstrategy, I don't have \$3
 21 million, I have 72,000 and the president of
 22 Microstrategy says, don't worry, I'll lend it
 23 to you.

24 The president of Microstrategy
 25 lends it to Johnny, Johnny gives the \$3

Page 50

1 D. Larue
 2 Q. Do you understand my question?
 3 A. Looking at the facts I've written
 4 down here, so the CEO has made a personal
 5 loan.

6 Q. To Johnny?
 7 A. To the unrelated party.
 8 Q. To fund Johnny's license agreement
 9 with Microstrategy, how should Microstrategy
 10 account for that transaction?

11 A. Again, assuming that there --
 12 assuming that the CEO of Microstrategy was
 13 acting in his individual capacity in terms of
 14 making the loan, assuming that he bore all of
 15 the risks and rewards that would result from
 16 making that loan, assuming that there was no
 17 expectation, reasonable or otherwise, that
 18 Microstrategy would reimburse that loan in
 19 the event that it was unpaid, these GAAP
 20 rules are pretty complicated. I'm trying to
 21 sift through them and just make sure.

22 I guess I would also assume there
 23 was a realistic expectation that Johnny would
 24 be able to repay that loan.

25 Q. No, the president of Microstrategy

Page 52

1 D. Larue
 2 million in cash to Microstrategy.
 3 How should Microstrategy account
 4 for that transaction?

5 A. I would have to know more.

6 Q. What would you have to know?

7 A. I would have to know if there was
 8 any express -- first, as a threshold matter,
 9 would there be any express or implied
 10 obligation on the part of Microstrategy to
 11 reimburse Michael Saler for the loan in the
 12 event that it wasn't repaid by the unrelated
 13 party?

14 Q. No.

15 A. And you're saying the person who
 16 loaned this money to Michael Saler is
 17 actually a 62 percent owner of Microstrategy?

18 Q. I didn't use Microstrategy.

19 MR. BUTLER: You said the CEO of
 20 Microstrategy.

21 Is it your assumption it's a 62
 22 percent owner?

23 Q. Under the hypo, he is the CEO.

24 A. He knows who the CEO is. That's
 25 the problem with your hypothetical.

Page 51

1 D. Larue
 2 knows he will do nothing, zero, he will have
 3 no employees, there is -- nothing is ever
 4 going to happen with those -- with that
 5 license.

6 MR. BUTLER: That doesn't mean he
 7 can't repay the loan.

8 Q. He has no -- at the time he enters
 9 it, he has no reason to believe that he will,
 10 in fact, be repaid.

11 A. Ever?

12 Q. Ever.

13 MR. BUTLER: That's an important
 14 fact.

15 A. You would have to determine what
 16 the substance of that transaction was, why
 17 did he make that loan to a related party
 18 knowing that he wouldn't be repaid if he
 19 knew, in fact, he wouldn't be repaid, why
 20 would he make a loan to the related party?

21 I don't understand the motivation.

22 It doesn't seem like a viable hypothetical.

23 Q. He wanted to increase the
 24 revenues -- he did it on the 29th of
 25 September and Microstrategy's third quarter

Page 53

1 D. Larue
 2 closes on September 30th. He wanted to have
 3 Microstrategy show increased revenues so he
 4 entered into this transaction.

5 How should Microstrategy account
 6 for this transaction?

7 MR. BUTLER: I object to the
 8 question because now you're asking a
 9 totally different question and I ask you
 10 to clarify the year you're talking about
 11 because it may make a difference in
 12 terms of the applicable GAAP, so can you
 13 give a year for this hypothetical?

14 Q. Mr. Larue, are you able to answer
 15 my question?

16 A. Well, are you talking about 1999?

17 Q. Does it matter?

18 A. I don't know if it matters or not.
 19 GAAP changes over time. I, in connection
 20 with my report, I reviewed the GAAP that was
 21 applicable during the period at issue.

22 Q. Let me make sure I understand. Is
 23 it your testimony that in certain years --
 24 let me -- given the facts that I have laid
 25 out for you, could Microstrategy properly

1 D. Larue
 2 transaction, the way you described it
 3 where -- this transaction, the way you
 4 described it, appears to me, because these
 5 are a pretty extreme set of facts and
 6 circumstances, in substance, to be a
 7 contribution to the capital of Microstrategy
 8 by the CEO, in which case, your debit to
 9 cash, the credit would be to owner's equity
 10 section.

11 Q. Why would Microstrategy not be able
 12 to recognize it as revenue rather than paid
 13 in capital?

14 A. Because there is absolutely no
 15 substance to this transaction beyond the CEO
 16 contributing \$3 million in cash to
 17 Microstrategy and the substance of this
 18 transaction under these extreme facts would
 19 seem to indicate this is a contribution to
 20 capital.

21 Q. When you say, substance, what do
 22 you mean?

23 A. Gosh, that's a term that's almost
 24 impossible to define.

25 Q. Is it defined under generally

1 D. Larue
 2 account for that transaction in the same
 3 manner as when the money came right from
 4 Johnny, there was no loan by Microstrategy's
 5 CEO? That is, can Microstrategy book the
 6 transaction that I've described with
 7 Microstrategy's president loaning the Johnny
 8 \$3 million, having no reason to believe that
 9 he would ever be paid back? Can
 10 Microstrategy book that transaction as \$3
 11 million to cash and \$3 million to revenue?

12 MR. BUTLER: Objection to form.

13 A. Again, you said that -- well,
 14 again, you've said that Johnny doesn't intend
 15 to develop the software. That doesn't mean
 16 that Johnny may not sell that software
 17 license to someone else to generate a return
 18 under which Johnny would use the proceeds
 19 from that return or get outside investors to
 20 repay the CEO of Microstrategy.

21 Q. Anything can happen, I agree, but
 22 Microstrategy's president has no reason to
 23 believe that he will ever be repaid.

24 A. Under those facts and, again, I
 25 guess my impression here is that this

1 D. Larue
 2 accepted accounting principles?

3 A. No, it's not.

4 Q. But you understand what it means?

5 A. No.

6 Q. You don't understand what your own
 7 word meant?

8 MR. BUTLER: Please don't interrupt
 9 the witness.

10 MR. HARRIS: I thought he was done,
 11 sorry.

12 A. When we talk about substance versus
 13 form, of course, I know what substance means.

14 In terms of attempting to define
 15 what facts and circumstances in any
 16 particular situation might be relevant to
 17 determining what the substance of a
 18 transaction is and how that may or may not
 19 vary from the form of a transaction? What
 20 are those facts and circumstances that are
 21 relevant? What facts and circumstances
 22 aren't relevant? How do you weigh and
 23 balance the facts and circumstances that you
 24 determine to be relevant? What qualitative
 25 and quantitative factors go into making that

Page 58

Page 60

1 D. Larue
 2 determination and at the end of the day, how
 3 do you conclude that this transaction does or
 4 does not have substance?

5 So what does substance mean? It's
 6 a term that we all have a pretty good
 7 understanding what that term is getting at,
 8 but in terms of detailed principles and
 9 guidelines for the implementation of
 10 substance, oftentimes, those are lacking.

11 Q. Well, I guess my question wasn't a
 12 little -- was a little different and I,
 13 again, apologize if I wasn't clear in my
 14 question.

15 It was my understanding that you
 16 used, in one of your answers, that the
 17 transaction in which you said it should be
 18 paid in capital, you used the term the
 19 substance of the transaction, correct?

20 A. I did.

21 Q. And in using the term -- my
 22 question was, in using the term substance,
 23 did you understand what you meant?

24 A. Yes.

25 Q. Do you believe that others

1 D. Larue
 2 in mind, correct?
 3 A. Yes.
 4 MR. BUTLER: This fact involved an
 5 actual transfer of a license, in this
 6 hypothetical, there is always a transfer
 7 of a license from Microstrategy to
 8 Johnny, correct?

9 MR. HARRIS: Yes.

10 MR. BUTLER: Go ahead.

11 Q. You said you had the facts of the
 12 prior hypothetical in mind.

13 What I'm changing this time is that
 14 Microstrategy's CEO says to Johnny's
 15 president, I will lend Johnny the money to be
 16 paid to Microstrategy and I will go out and
 17 look for investors in Johnny and if I can
 18 find them, I'll get repaid and if I can't, I
 19 won't.

20 How should Microstrategy account
 21 for that transaction?

22 A. That muddies the water a bit. I
 23 don't know.

24 Q. You don't know?

25 A. I don't know.

Page 59

Page 61

1 D. Larue
 2 understood what you meant?

3 MR. BUTLER: Objection to form.

4 Do you mean others in this room?

5 MR. HARRIS: Yes.

6 A. In the context of using substance,
 7 in this context, I think we all know what it
 8 means, have a general idea as to what it
 9 means.

10 Q. Now --

11 MR. BUTLER: I will state for the
 12 record, I don't know what it means.

13 MR. HARRIS: That's why you're
 14 still litigating this case.

15 Q. Now, let's go back to the
 16 hypothetical between Johnny and
 17 Microstrategy's CEO. Microstrategy says --
 18 Microstrategy's CEO says to Johnny's
 19 president, I will personally lend you the
 20 money and then I will go out and look for
 21 investors in Johnny.

22 A. I'm sorry, would you back up and
 23 repeat yourself.

24 Q. Let me start over.

25 You have the fact of the prior hypo

1 D. Larue

2 Q. Good.

3 MR. HARRIS: Should we take a
 4 break?

5 THE VIDEOGRAPHER: We are going off
 6 the record. It's actually 10:24.

7 (Recess.)

8 THE VIDEOGRAPHER: We're going back
 9 on the record. The time is 10:38. This
 10 is tape No. 1.

11 Q. Mr. Larue, you submitted two expert
 12 reports in this matter, is that correct?

13 A. I submitted an opening report and a
 14 rebuttal report, yes, sir.

15 Q. You submitted the opening report in
 16 early January 2007, correct?

17 A. Yes, sir.

18 Q. And it's my understanding that you
 19 submitted your rebuttal report in mid
 20 February 2007, correct?

21 A. Yes, sir.

22 Q. At the time you submitted your
 23 opening report in early January 2007, were
 24 you aware that Dexia -- let me stop.

25 When I use the term Dexia, is it

16 (Pages 58 to 61)

ESQUIRE DEPOSITION SERVICES
 212-687-8010

2dfd6da5-8e66-4d39-80f9-bae02f49a691

1 D. Larue
 2 fair to say that you understand that to mean
 3 the defendant, Dexia Bank Belgium?
 4 A. Yes, sir.
 5 Q. And can we agree that if I use the
 6 term Dexia today, it includes its
 7 predecessors in interest, like Artesia,
 8 Paribas and Bacob?
 9 A. Yes, sir, if I can do the same.
 10 Q. If you use Dexia, I will understand
 11 you to mean its predecessor in interest, as
 12 well.
 13 Is that a fair agreement?
 14 A. Yes.
 15 Q. So let me go back to your initial
 16 or opening report.
 17 At the time you submitted your
 18 opening report in early January 2007, were
 19 you aware that the Belgium authorities had
 20 brought criminal proceedings against Dexia
 21 with regard to its actions related to Lernout
 22 and Hauspie Speech Products?
 23 A. I heard that. I don't know.
 24 Q. You were aware or you were not
 25 aware?

1 D. Larue
 2 specific, but I don't -- no.
 3 Q. Is the same true for your -- with
 4 regard to your opinions in your reply report
 5 or rebuttal report?
 6 A. I believe that to be true.
 7 You would have to be more specific
 8 in terms of what facts or circumstances
 9 you're referring to.
 10 Q. Let me hand you a document that we
 11 will mark as Larue Exhibit 3.
 12 (U.S. Securities and Exchange
 13 Commission document marked Larue Exhibit
 14 3 for identification.)
 15 Q. Have you ever seen Larue Exhibit 3
 16 before?
 17 A. I believe I may have some time ago
 18 and actually there are two documents here,
 19 aren't there?
 20 Q. There are, although I think it is
 21 one. It is a press release by the United
 22 States Securities and Exchange Commission
 23 dated October 10, 2002 and attached to it is
 24 a complaint in a civil injunction action
 25 filed by the SEC against Lernout and Hauspie

1 D. Larue
 2 A. I don't remember where I heard
 3 that. I can't say I know for a fact that I
 4 knew that -- that I knew that for a fact
 5 rather.
 6 Q. Did you know that for a fact prior
 7 to today?
 8 A. I don't know that for a fact as I
 9 sit here.
 10 Are you telling me they had brought
 11 criminal charges against Dexia?
 12 Q. Yes.
 13 A. Then accepting your statement, I
 14 know it for a fact.
 15 MR. BUTLER: I object. There have
 16 not been criminal charges filed in
 17 Belgium.
 18 Q. If there were criminal charges
 19 filed against Dexia regarding its activities
 20 in relationship to Lernout & Hauspie Speech
 21 Products, would that change any of your
 22 opinions in your opening report?
 23 A. If they brought charges, we are not
 24 talking about a conviction and when you say
 25 activities, you would have to be more

1 D. Larue
 2 Speech Products, NV, correct?
 3 A. Yes.
 4 Q. And have you seen complaints issued
 5 by the SEC against public companies in the
 6 past?
 7 A. Yes.
 8 Q. So you understand what a complaint
 9 by the SEC is?
 10 MR. BUTLER: Objection to form.
 11 Are you asking for his legal
 12 understanding of what it is?
 13 MR. HARRIS: I asked if he uses it.
 14 If he does, he does.
 15 A. Injunctive relief, I'm not familiar
 16 with that term.
 17 Q. Are you familiar with the SEC
 18 sometimes sues companies?
 19 A. I've read through complaints
 20 before, but I don't know anything about
 21 suing.
 22 Q. Were you aware prior to -- at the
 23 time you submitted your opening report, that
 24 the SEC had filed an accounting fraud action
 25 against Lernout and Hauspie Speech Products?

1 D. Larue

2 A. I believe I had seen this before.
3 That I had reviewed this briefly before I
4 submitted my report.

5 Q. And if you did, it would be in your
6 list of documents that you considered,
7 correct?

8 A. I don't know.

9 Q. Well, if you reviewed it before,
10 why wouldn't it be in the list of documents
11 that you considered?

12 MR. BUTLER: I object to form.

13 Are you asking him what the legal
14 standard is in what needs to be included
15 in the expert report? This witness will
16 not know the answer.

17 MR. HARRIS: He can answer the
18 question.

19 MR. BUTLER: What was your
20 question? Can I have it reread, please.

21 (Record read.)

22 MR. BUTLER: He didn't say he
23 considered it in formulating his
24 opinion.

25 MR. HARRIS: Are you going to

1 D. Larue

2 I do a lot of reading on a regular
3 basis. Part of that reading includes various
4 publications and pronouncements by the SEC,
5 so when I read that, I honestly don't recall
6 that, but I do recall that I didn't consider
7 this or use this in the preparation of my
8 report.

9 Q. Now, if you look at the first page
10 of Larue Exhibit 3, there is a section with
11 regard to Dictation Consortium and Brussels
12 Translation Group transactions.

13 Do you see that?

14 A. No, sir, I don't.

15 Q. Larue Exhibit 3.

16 A. Yes, sir, I do.

17 Q. Is it your understanding that Dexia
18 loaned money to one or both of Dictation
19 Consortium and Brussels Translation Group?

20 A. I haven't read this document
21 recently. I don't know what it says.

22 Q. Feel free to read it.

23 MR. BUTLER: He is asking about
24 your understanding, not about what this
25 document says.

1 D. Larue

2 testify?

3 MR. BUTLER: If I have to.

4 MR. HARRIS: You can object to the
5 form.

6 I was very polite the first time,
7 I'm being polite this time. If you
8 object to the form, you should object to
9 the form.

10 MR. BUTLER: I'm objecting because
11 you're trying to use word play into
12 tricking this witness to answer a legal
13 question and I will not let you do that.

14 Q. Can you answer the question?

15 A. What was the question?

16 Q. If you reviewed the SEC's complaint
17 against Lernout and Hauspie Speech Product
18 prior to the submission of your opening
19 report in January of 2007, why would it not
20 be included in the list of documents that you
21 considered?

22 A. Well, it certainly wasn't a
23 document I considered in preparing my report
24 and I may have reviewed this before I became
25 involved in the Dexia case.

1 D. Larue

2 A. It's my understanding. I don't
3 know that for a fact, but it's my
4 understanding that loans were made to
5 Dictation Consortium and Brussels Translation
6 Group.

7 Q. By Dexia?

8 A. I don't know. I think so.

9 Q. If you look at the -- that section
10 that relates to Dictation Consortium and
11 Brussels Translation Group, the SEC says in
12 its press release, at the end, it says,
13 Because the transactions were, in substance.

14 A. Where are you?

15 Q. At the very --

16 A. Here we go.

17 Q. Because the transactions were, in
18 substance, disguised loans and not sales or
19 service transaction, Lernout and Hauspie
20 should not have recognized revenue from those
21 transactions under generally accepted
22 accounting principles.

23 A. I see that.

24 Q. Do you agree or disagree with the
25 SEC's statement?

1 D. Larue
 2 A. I don't have any basis for agreeing
 3 or disagreement. I don't know the underlying
 4 facts and circumstances.
 5 Q. Then there is a section that
 6 relates to Language Development Companies,
 7 correct?
 8 A. Yes, sir.
 9 Q. Are you aware of any Language
 10 Development Companies with regard to the
 11 dispute in which you are currently an expert?
 12 MR. BUTLER: You mean this dispute?
 13 MR. HARRIS: Yes.
 14 A. Am I aware of them, yes.
 15 Q. Were they special purpose entities?
 16 A. The term special purpose entities
 17 isn't defined under GAAP.
 18 Q. You used the term special purpose
 19 entities?
 20 A. Not to describe them.
 21 Q. That's my question.
 22 A. The term isn't defined. I guess
 23 you can call that special purpose entities.
 24 It's not a term that is defined under GAAP.
 25 Q. Did you understand that any of the

1 D. Larue
 2 most people would consider to be a special
 3 purpose entity and the real issue, I
 4 believe -- the reason I put that background
 5 in there had to do with whether or not the
 6 relationship between entities required that
 7 one include the other in their consolidated
 8 financial statements. That was the purpose
 9 of that discussion.
 10 MR. HARRIS: Can you read that
 11 answer back.
 12 (Record read.)
 13 Q. Just so I understand that last
 14 question, the real purpose was whether or not
 15 Lernout and Hauspie Speech Products needed to
 16 consolidate the financials of the LDCs with
 17 Lernout and Hauspie?
 18 A. That's correct.
 19 Q. Do you have an opinion as to
 20 whether or not the Language Development
 21 Companies were special purpose entities?
 22 A. If you'll define what you mean by
 23 special purpose entities, I would be glad to
 24 tell you whether or not I think they fit into
 25 that category.

1 D. Larue
 2 Language Development Companies that are
 3 identified in your report to be special
 4 purpose entities?
 5 A. I don't think I considered whether
 6 they were special purpose entities or not.
 7 Again, there is no definition or
 8 there was no definition. There still is no
 9 definition of special purpose entities in
 10 GAAP, so when you talk about a special
 11 purpose entity, that may have a different
 12 meaning to different people.
 13 Q. Do you know what relevance your
 14 discussion of special -- do you believe that
 15 your discussion of special purpose entities
 16 has any relevance to the dispute in which
 17 you're currently testifying?
 18 MR. BUTLER: I object to the form
 19 of the question.
 20 Go ahead.
 21 A. I was asked by counsel to discuss
 22 the treatment of special purpose entities
 23 under GAAP.
 24 -- These particular entities had --
 25 certain characteristics, at least of what

1 D. Larue
 2 Once again, you're using a term
 3 that doesn't have a precise unambiguous
 4 definition under GAAP.
 5 Q. You used the term special purpose
 6 entities, did you not?
 7 A. I did under section 3.
 8 Q. As you use the term in section 3 of
 9 your report, do you have an opinion as to
 10 whether or not the Language Development
 11 Companies were special purpose entities?
 12 A. I didn't define the term. I did
 13 not set the parameters of what was and was
 14 not a special purpose entity in my purpose.
 15 There is no special entity to be had.
 16 Q. Do you understand what you meant by
 17 special purpose entity when you wrote it in
 18 your report?
 19 A. Of course.
 20 Q. But other people's understanding, I
 21 take it, could be very different because
 22 there is no definition of what special
 23 purpose entity means?
 24 A. That's correct. GAAP uses that
 25 term, but it doesn't really define the term.

1 D. Larue

2 Q. As you use the term and understood
3 it in your report, special purpose entities,
4 do you have an opinion as to whether or not
5 the Language Development Companies were
6 special purpose entities?

7 A. I don't know.

8 Q. You don't know, as you sit here
9 today, you don't have an opinion?

10 A. As I use the term, no, I don't.

11 Q. No, you don't have an opinion or
12 no, you don't consider them to be?

13 A. It depends on the facts and
14 circumstances of specific to the LICs in
15 terms of a variety of things and, again,
16 there is no unambiguous definition of what an
17 SPE is.

18 Q. Based on your knowledge of the
19 Language Development Companies, do you have
20 an opinion, as you sit here today, whether or
21 not the Language Development Companies were
22 special purpose entities, as you use that
23 term in your opening report?

24 A. I would say that the Language
25 Development Companies certainly had some of

1 D. Larue
2 and circumstances for all of these entities.

3 Q. Fair enough.

4 Now, if you turn to the complaint
5 that is part of Larue Exhibit 3, and I am
6 going to focus your attention to paragraph 16
7 and I would like you to review paragraph 16
8 and as much or as little of the complaint,
9 the SEC's complaint or Larue Exhibit 3 as you
10 would like and let me know when you're ready.

11 MR. BUTLER: Why don't you ask him
12 a question so he knows what he is
13 looking for. He doesn't want to
14 independently review that at all.

15 Q. With that in mind, I would like you
16 to review paragraph 16.

17 MR. BUTLER: With what in mind, you
18 haven't asked him a question?

19 Q. Would you please review paragraph
20 16 of Larue Exhibit 3.

21 MR. BUTLER: Okay.

22 A. Yes, sir. I've read paragraph 16.
23 I may need to read it again.

24 Q. One of the sentences says, The SEC
25 asserts to bolster its reported revenue. L&H

1 D. Larue

2 the characteristics of what typically people
3 would consider to be a special purpose entity
4 and, again, when you say Language Development
5 Companies, there were several different
6 Language Development Companies.

7 They had different characteristics.

8 They weren't all the same. They were owned
9 by different parties. They were capitalized
10 at different levels. They were formed at
11 different times. There are a number of
12 differences, so you have to be careful that I
13 don't lump them all together when they
14 shouldn't be lumped all together.

15 Q. Is it your opinion, as you sit here
16 today, that any of the Language Development
17 Companies were special purpose entities, as
18 you used that term in your report?

19 A. Possibly.

20 Q. Possibly, you possibly may have an
21 opinion?

22 A. No, they possibly may have been
23 special purpose entities as I used that term
24 in the report.

25 I don't have the underlying facts

1 D. Larue

2 want a new and elaborate scheme to, in
3 essence, create additional L&H customers.
4 These new customers, quote, the Language
5 Development Companies, end quote, or LDCs, in
6 quotes, enabled L&H to claim revenue of 100
7 million in license fees and 8.5 million in
8 prepaid royalties from the LDCs in 1996 and
9 1997, giving the false impression --

10 A. I'm sorry, '98 and '99.

11 Q. 1998 and 1999, giving the false
12 impression of exponential growth.

13 Do you see that?

14 A. I do.

15 Q. Are you aware of any facts or
16 circumstances that would suggest the SEC's
17 statement there is inaccurate?

18 A. That's a lot of statements.

19 First of all, let me just, to
20 bolster and scheme, these really look to
21 subjective intent on the part of L&H.

22 MR. BUTLER: I just want to
23 clarify. You're asking for his
24 understanding of the facts of the case,
25 is he aware of facts, you're not asking

1 D. Larue
 2 about his opinion?
 3 MR. HARRIS: Correct.
 4 A. You stated that in the negative.
 5 Would you repeat the question.
 6 Q. Are you aware of any facts that
 7 would make the statements by the SEC that we
 8 just read into the record inaccurate?
 9 A. I'm certainly not aware of all of
 10 the facts in this case.
 11 I do have an impression that there
 12 are facts that would dictate against a
 13 conclusion, this conclusion. There are facts
 14 perhaps on both sides of the issues. It
 15 looks like they reviewed all of the facts and
 16 came to a conclusion.
 17 Q. So I believe that the answer you
 18 gave me was yes, you are aware of certain
 19 facts that would lead -- that would cause the
 20 statements by the SEC to be inaccurate?
 21 MR. BUTLER: Objection to form.
 22 A. My expert report was based on the
 23 assumptions I stated in the report.
 24 In the process of preparing my
 25 report, I did review some of the documents in

1 D. Larue
 2 this case, so I've had some exposure to some
 3 of the facts clearly.
 4 I think there probably are facts
 5 out there that would dictate that this wasn't
 6 a scheme or this wasn't the purpose behind
 7 the LDCs, that there were other purposes
 8 behind the LDCs perhaps or at least some of
 9 the LDCs.
 10 I make the other comment that this
 11 statement refers to all of the LDCs and I'm
 12 unfamiliar with the LDCs. I think there were
 13 about 30 LDCs. They may also be referring to
 14 some of the other entities that were named a
 15 little differently. I'm not familiar with
 16 those other entities or what happened or what
 17 didn't happen.
 18 Q. Just so I make sure I understand
 19 the answer, do you have my question in mind?
 20 What question did I ask you?
 21 A. You asked me if I was aware of any
 22 facts that would indicate that this
 23 conclusion was wrong.
 24 Q. Or inaccurate.
 25 A. Or inaccurate.

1 D. Larue
 2 Q. And is the answer to that question
 3 you do or you don't have such facts?
 4 A. I think there are always facts and
 5 circumstances on both sides of the issue, so
 6 certainly there are going to be facts out
 7 there that would lead in one direction and
 8 other facts that would lead in another
 9 direction and I've seen documents that refer
 10 to some of those facts.
 11 Q. And I guess what I'm really asking
 12 you is not to speculate about what facts may
 13 be out there, but what facts -- any facts
 14 that you are aware of, as you sit here today?
 15 A. Yes.
 16 Q. What are those facts?
 17 A. Oh, gosh. There are a number of
 18 facts. I guess one fact would be that it
 19 appears that the technology that was
 20 licensed -- the technology development tools
 21 that were licensed to the LDCs were
 22 functional and capable of performing as
 23 advertised.
 24 I believe that the licenses --
 25 license agreements were real, that they

1 D. Larue
 2 conveyed certain rights and privileges to the
 3 LDCs. The LDCs had had independent
 4 investors, it's my understanding from the
 5 audit committee report that at least
 6 initially the LDCs, the intention of the LDCs
 7 was to actually develop the language specific
 8 software within the LDC, so those are some of
 9 the facts that would seem to indicate that
 10 the LDCs, at least initially or at least some
 11 of them had purposes that were different from
 12 what's described here.
 13 Q. When you say, initially, what do
 14 you mean by initially and which LDCs do you
 15 consider to be initial?
 16 A. I don't recall. I didn't look at
 17 specific -- the audit committee report, I
 18 believe, referred to a couple of the LDCs.
 19 There were several LDCs out there.
 20 I never really reviewed or
 21 assimilated into my report any of the
 22 specific facts and circumstances about the
 23 activities of the specific LDCs.
 24 MR. HARRIS: Can you read that
 25 back.

1 D. Larue
2 (Record read.)

3 Q. Now, you say you never really
4 reviewed the facts and circumstances of the
5 particular LDCs except those four in your
6 report?

7 A. For each one of the specific LDCs,
8 that's correct. I don't believe information
9 is available for most of them or some of the
10 information.

11 Q. Is that true, as you sit here
12 today, not limiting it to your report, but
13 you never reviewed the particular facts and
14 circumstances of specific LDCs?

15 A. All of the facts and circumstances
16 surrounding specific LDCs, no.

17 Q. Did you review any of the facts and
18 circumstances involving any specific LDC?

19 A. Well, of course I did.

20 Q. What facts and circumstances did
21 you --

22 A. I knew, for example, that Radial
23 had formed three LDCs, LIC had formed four
24 LDCs and LDF had formed, I believe, six LDCs.

25 Can I ask a question?

1 D. Larue
2 in a District Court. This is what the SEC
3 finally believes to be true and accurate,
4 otherwise, they could not allege it in
5 District Court.

6 MR. BUTLER: Sir, that is not true.
7 These are allegations. They are no more
8 true than the allegations in this
9 complaint in this case and you are not
10 going to be able to mislead this
11 witness. This is a complaint. A
12 complaint is a complaint. You know what
13 it means, I know what it means. The SEC
14 is often wrong.

15 I'm sure that Boies, Schiller has
16 defended clients against the SEC and if
17 you want to take the position --

18 MS. DYER: A consent order was
19 issued here. They copped to all the
20 allegations. Why are you wasting
21 everyone's time?

22 MR. HARRIS: The SEC reached the
23 conclusion -- if you want to mislead
24 your own witness, you clearly have done
25 that throughout his report process.

1 D. Larue

2 Q. Yes.

3 A. This says complaint for injunctive
4 relief. This doesn't mean a final
5 determination has been made by the SEC as to
6 the complaint alleged, this is still an
7 allegation, this is not a conclusion or
8 enforcement action on the part of the SEC, is
9 that correct?

10 It says complaint. Is this
11 something that's been alleged or is this
12 something that -- it says alleges, SEC
13 alleges. Okay, I understand now.

14 MR. BUTLER: What's the answer to
15 that question? You said he could ask
16 it.

17 MR. HARRIS: I said he can ask it.

18 MR. BUTLER: Should you tell him
19 the answer to the question or should I?

20 MR. HARRIS: Nobody should tell him
21 the answer to the question.

22 MR. BUTLER: The answer to your
23 question is these are allegations.

24 Q. These are the final conclusions by
25 the SEC against L&H and they are bringing it

1 D. Larue

2 MS. DYER: If you're going to get
3 on your high horse, why don't you read
4 the consent order before do you so.

5 MR. BUTLER: If there is a consent
6 order that you want to ask this witness
7 about that I don't think he has ever
8 seen, you can ask him about that, but
9 even a consent order --

10 MR. HARRIS: I didn't want to ask
11 him about that.

12 MR. BUTLER: It does not establish
13 the facts in this case and you should
14 not pretend otherwise with this witness.
15 You haven't proven anything at trial yet
16 and so I don't know why you think it's
17 ridiculous for me to suggest that you
18 may have the facts wrong.

19 MR. HARRIS: Because this is not
20 the time to do it.

21 MR. BUTLER: I agree it's not the
22 time to do it, but you said he can ask a
23 question and you decided to show him
24 this document.

25 Go ahead. I don't mean to

Page 86

1 D. Larue
 2 interrupt.
 3 MR. HARRIS: Yes, you do mean to
 4 interrupt and you've been doing it all
 5 morning.
 6 I'm going to ask you again to try
 7 to be professional. I understand that
 8 is difficult for you. You have not
 9 demonstrated that here this morning.
 10 You are to object to the form and
 11 nothing else. Stop coaching the witness
 12 and stop interrupting the examination.
 13 I have been polite before, but it is
 14 time for you to stop. You understand.
 15 MR. BUTLER: I've heard all this.
 16 You told this witness he could ask a
 17 question. It, unfortunately, did not
 18 turn out too well, but why don't you
 19 just ask your next question.
 20 Q. Are there any facts and
 21 circumstances -- identify all facts and
 22 circumstances of which you are aware that
 23 would make any statement in paragraph 16 of
 24 Larue Exhibit 3 inaccurate.
 25 MR. BUTLER: Objection to form.

Page 88

1 D. Larue
 2 MR. BUTLER: I object to the form
 3 of the question.
 4 We're not presenting Professor
 5 Larue as an expert on the facts and his
 6 factual assumptions are set forth in his
 7 report, so your question is
 8 inappropriate.
 9 Q. You can answer the question now.
 10 A. First of all, you're asking me for
 11 all of the facts.
 12 I don't remember all of the facts
 13 that I may have been aware of or been exposed
 14 to and, frankly, I don't remember in every
 15 case what are facts or what are things that I
 16 thought might have been facts or had reason
 17 to believe might have been facts, but didn't
 18 know for a fact that they were facts, so, you
 19 know, in my report, I knew that Radial or at
 20 least I understood that Radial had been
 21 formed by a private investor whose name was,
 22 I believe, Van Deun, V-a-n D-e-u-n, and I
 23 believe it was in March of '98, that that
 24 investor had contributed Belgium francs to
 25 Radial, that Radial had formed three LDCs. I

Page 87

1 D. Larue
 2 A. Again, I did a very limited review
 3 of the facts and circumstances. My report is
 4 based on the assumptions that I made in
 5 formulating my opinion.
 6 Q. Mr. Larue, again, I'm going to ask
 7 you if you had my question in mind?
 8 MR. BUTLER: Sir, he answered your
 9 question. Ask your next question.
 10 Q. What was my prior question?
 11 MR. HARRIS: Could you reread his
 12 prior question, please.
 13 (Record read.)
 14 MR. BUTLER: I think he answered
 15 that question, so you don't have to
 16 answer it again, but if you want to ask
 17 it again, you're free to do so.
 18 Q. I believe you didn't answer the
 19 question. I didn't ask you about your
 20 report. I didn't ask what you did or didn't
 21 do.
 22 I asked about all facts of which
 23 you are currently aware which would make the
 24 statements in paragraph 16 of Larue Exhibit 3
 25 inaccurate.

Page 89

1 D. Larue
 2 believe it was Turkish, Farci and Bassa.
 3 That the LDCs entered into licensing
 4 agreements with Lernout and Hauppie. The
 5 LICs were formed by Hardeman, I believe,
 6 sometime in 1998 with contributions and other
 7 investors and that LIC formed, I believe,
 8 four LDCs, Czech, Slavic, Polish, Hungarian
 9 and purchased licenses, nonrefundable
 10 licenses from L&H.
 11 LDF, I believe, was formed sometime
 12 in '98 or '99 by, among others, an insurance
 13 company in Belgium who made contributions to
 14 the capital and LDF formed, I think, six
 15 LDCs, I think 14 was the total.
 16 It's my understanding that Artesia
 17 made loans to the LDCs.
 18 What else?
 19 Q. Is there any other fact of which
 20 you are aware that you believe makes the
 21 statements in paragraph 16 of Larue 3
 22 inaccurate?
 23 MR. BUTLER: Objection to form.
 24 A. I can't recall all the facts and
 25 circumstances that I reviewed in connection

23 (Pages 86 to 89)

ESQUIRE DEPOSITION SERVICES
 212-687-8010

2dfd6da5-8e66-4d39-80f9-bae02f49a691

1 D. Larue
 2 with preparing my report.
 3 I can state that the facts that I
 4 relied upon and the assumption that I relied
 5 upon as represented to me by counsel are
 6 stated clearly in my report.
 7 Q. And have we now exhausted, as you
 8 sit here today, all facts of which you are
 9 aware today and can remember that would make
 10 the statements in paragraph 16 of Larue
 11 Exhibit 3 inaccurate in your view?
 12 MR. BUTLER: Objection to form.
 13 A. No, I don't think so.
 14 Q. Please provide those to me.
 15 A. One of the problems that I have in
 16 answering your question is that certain facts
 17 I don't know to be facts.
 18 I don't know -- I haven't seen
 19 documentation that allows me to independently
 20 make a determination as to what something
 21 that I understood to be the case was, in
 22 fact, a fact of the case.
 23 Once again, the facts upon which I
 24 relied and the assumptions on which I relied
 25 are clearly stated in my report as the basis

1 D. Larue
 2 for the opinions rendered in that report.
 3 I can't -- I just can't remember
 4 all of the things -- I can't make the
 5 distinction sometimes between, you know, what
 6 was alleged a fact to have been in one of the
 7 complaints that I reviewed and what is, in
 8 fact, a fact and one of the things that I
 9 have noticed is that oftentimes, people are
 10 pretty careless with the accuracy of the
 11 facts that they assert.
 12 Q. Let's move to paragraph 18 of Larue
 13 Exhibit 3.
 14 I would ask that you review that
 15 and I am going to direct your attention to
 16 various statements therein.
 17 A. All right. I've read it.
 18 Q. Now, in paragraph 18, among other
 19 things, the SEC states, The LDC were little
 20 more than shell companies.
 21 Do you see that?
 22 A. I do.
 23 Q. Do you understand it?
 24 A. Well, there is no definition as to
 25 what a shell company is. It certainly isn't

1 D. Larue
 2 defined under GAAP. It's one of the terms
 3 that is used that is subject to various
 4 means.
 5 The term shell company is not a
 6 term that is defined anywhere in GAAP
 7 throughout the relevant period, but I have a
 8 general idea as to what they must mean.
 9 Q. Okay. What is that understanding?
 10 A. Well, it appears that they're
 11 describing companies without -- without
 12 employees or assets, liabilities, business
 13 activities and so forth and let me make a
 14 note that it says more than shell companies,
 15 so they were more than shell companies.
 16 And if I could, one other comment.
 17 MR. BUTLER: Feel free to finish
 18 your answer.
 19 Q. Go on as long as you want. At some
 20 point, you'll answer my questions.
 21 A. I thought I had.
 22 The public disclosure, this is a
 23 summary of the public disclosure from the
 24 financial statements, it's not a verbatim
 25 restatement of that disclosure, it's worded

1 D. Larue
 2 differently. For example, they refer to
 3 strategic partners in the public disclosure.
 4 I don't believe they refer to LDCs by that
 5 name. Paragraph 18, where it says, Within
 6 that public disclosure, what follows that is
 7 someone else's description of what was
 8 actually said in the disclosure. It's not
 9 verbatim.
 10 Q. That someone else is the Securities
 11 and Exchange Commission, correct?
 12 A. Yes.
 13 Q. It is the Securities and Exchange
 14 Commission that used the term shell
 15 companies?
 16 A. In this document, yes.
 17 Q. And you have provided your
 18 understanding of what the SEC meant by the
 19 term shell companies.
 20 Now, do you have any facts to
 21 believe that the SEC got it wrong, that the
 22 LDCs were, in fact, more than little more
 23 than shell companies?
 24 A. I have an understanding that the
 25 LDCs were more than what one might infer from

1 D. Larue

2 the use of that term here.

3 Q. Where does that understanding come
4 from?5 A. It probably comes from the
6 documents that I reviewed or it may have come
7 from the complaint that I reviewed, that set
8 forth what purported to be facts and may or
9 may not have been facts. That's probably
10 where it came from.11 Q. Now, you said that generally
12 accepted accounting principles does not
13 define shell companies, correct?

14 A. That's correct.

15 Q. Does generally accepted accounting
16 principles define Wednesday?

17 MR. BUTLER: Objection to form.

18 A. Not to my knowledge.

19 Q. Do you think that there is -- do
20 you think that it is, that all terms that
21 accountants use are defined in GAAP?22 A. I think that technical terms that
23 could lead to different definitions or
24 different interpretations or at least
25 critical terms, many of those terms,

1 D. Larue

2 of 2006, sometime in late -- I don't recall,
3 April, May, possibly.4 Q. And do you have -- can you
5 approximate the amount of time that you spent
6 from the time that you were retained until
7 January 5, 2007 working on this matter?8 A. Three hundred hours. Probably
9 more.10 Q. Mr. Larue, did anyone assist you
11 with regard to the work that you did in this
12 case?

13 A. Yes, sir.

14 Q. And who was that?

15 A. As I've indicated in my report,
16 Cornerstone Research Associates assisted me
17 with this report.18 Q. Did anyone else assist with you
19 this report, your report?20 A. Of course, I had discussions with
21 attorneys along the way, but in terms of
22 assisting me with the report, Cornerstone
23 Associates and individuals with Cornerstone
24 Associates. I didn't hire anyone to help me,
25 no.

1 D. Larue

2 certainly not all of them have been defined
3 in GAAP.4 GAAP does contain several
5 definitions of what they mean and some of
6 those definitions are very complicated, but,
7 yes.8 THE VIDEOGRAPHER: We are going off
9 the record. This is the end of tape 1.

10 The time is 11:23.

11 (Recess.)

12 THE VIDEOGRAPHER: We are going
13 back on the record. This is tape No. 2.

14 The time is 11:35.

15 MR. HARRIS: Could you read back
16 the last question and answer.

17 (Record read.)

18 Q. Having had an opportunity to review
19 the statements by the SEC in Larue Exhibit 3,
20 is there anything in there that causes you to
21 change any of your opinions in this matter?

22 A. No, sir.

23 Q. Mr. Larue, when were you retained
24 in this matter?

25 A. I don't recall. It was in spring

1 D. Larue

2 Q. Was there a particular person that
3 you viewed as the point person at Cornerstone
4 Associates?

5 A. That would be Amir Rosen.

6 Q. And had you worked with Mr. or Mrs.
7 Rosen --

8 A. Mr.

9 Q. Had you worked with Mr. Rosen in
10 the past?

11 A. No.

12 Q. Why did you decide to use Mr. Rosen
13 at this point?

14 A. I didn't make that decision.

15 Cornerstone Research Associates decided who
16 they would assign to this case.

17 Q. Maybe I wasn't clear.

18 Had you worked with Cornerstone
19 Associates previously?20 A. I had not worked with them, no,
21 sir.22 Q. How did you decide to use
23 Cornerstone Associates to assist you with
24 this report?

25 MR. BUTLER: Do you mean

Page 98

1 D. Larue
 2 Cornerstone Research, the company, or
 3 associates at Cornerstone?
 4 A. How did I decide?
 5 Q. Yes.
 6 A. Adele Turki contacted me on behalf
 7 of counsel. They contacted me.
 8 Q. I see.
 9 What did they say to you?
 10 A. They asked me if I would have an
 11 interest in working with them on a case.
 12 Q. And was that your first contact
 13 with regard to this case?
 14 A. With regard to this case, that's my
 15 first contact with regard to this case, yes,
 16 I believe it was, yes.
 17 Let me back up. Just to be clear,
 18 I had met Dr. Turki in January of 2006.
 19 Q. Was the telephone call from Mr.
 20 Turki – Dr. Turki, I'm sorry – the first
 21 exposure you had to this matter?
 22 A. To this matter?
 23 Q. Yes.
 24 A. Probably not.
 25 Q. You were already retained?

Page 100

1 D. Larue
 2 catch typographical errors and so forth.
 3 Certainly in connection with
 4 reviewing the KPMG work papers, they did a
 5 comprehensive, or at least they did a search
 6 of the KPMG database, as I've described in
 7 this report, and drafted up a summary of
 8 their findings for me to review.
 9 Q. Did Cornerstone Research do
 10 anything else with regard to your report?
 11 A. I think that covers it.
 12 Q. Who retained you as an expert in
 13 this matter?
 14 A. I believe I was retained by Mr.
 15 Butler. That was communicated to me by Dr.
 16 Turki.
 17 Q. And what were you asked to do as an
 18 expert in this matter?
 19 A. I've indicated in my report what I
 20 was asked to do.
 21 Q. What was it?
 22 A. I was asked to offer the following
 23 information and opinions:
 24 An overview of financial reporting
 25 of U.S. generally accepted accounting

Page 99

1 D. Larue
 2 A. No, no, sir. When I say probably
 3 not, I mean I do read a lot. I do keep up
 4 with things. I've got, certainly in my
 5 capacity as chairman of the audit committee,
 6 I read a great deal during the course of any
 7 given week and, you know, one of the things
 8 that I read are SEC publications.
 9 So whether or not I heard of Dexia
 10 or when I first learned of that, was that
 11 before or after they contacted me, I can't
 12 tell you.
 13 Q. At the time that Dr. Turki
 14 contacted you, you had not yet been retained
 15 as an expert in this matter, correct?
 16 A. That's correct.
 17 Q. What did Cornerstone Research do
 18 for you?
 19 A. Well, they would review drafts of
 20 my report and they would look over the drafts
 21 of that report.
 22 I assumed that they were verifying
 23 the accuracy of the representations that I
 24 made in terms of the applications of GAAP, I
 25 assume they were doing that. They would

Page 101

1 D. Larue
 2 principles and auditing principles as they
 3 would apply to a public company such as
 4 Lernout and Hauspie.
 5 An overview of, in particular, of
 6 the accounting for revenues from special
 7 purpose entities based on factual assumptions
 8 about specific transactions at issue in this
 9 litigation.
 10 I was asked to provide a
 11 description of the accounting principles
 12 under GAAP that were relevant to whether or
 13 not – whether and under what conditions L&H
 14 could recognize revenue from these
 15 transactions.
 16 An opinion as to whether plaintiffs
 17 are correct in asserting that L&H's revenue
 18 recognition related to these transactions was
 19 clearly improper under then existing GAAP
 20 based on the loans made by Artesia.
 21 An opinion as to whether, to an
 22 outside observer, could determine L&H's
 23 accounting treatment for these transaction
 24 based on a review of public filings and press
 25 releases.

26 (Pages 98 to 101)

ESQUIRE DEPOSITION SERVICES
 212-687-8010

Page 102

1 D. Larue

2 An opinion based on a review of the
 3 documents produced in this litigation from
 4 the files of L&H as auditor KPMG as to
 5 whether KPMG was misled by the loan
 6 documentation prepared by Artesia in
 7 connection with these transactions and an
 8 opinion as to whether the reasons given by
 9 L&H's audit committee for announcing a
 10 restatement of 373 million in L&H revenue are
 11 the same as those alleged by plaintiffs in
 12 this case.

13 I was also asked to provide a
 14 description of the various ways in which,
 15 according to plaintiffs, L&H inflated its
 16 publicly reported revenue pursuant to an
 17 alleged scheme to defraud and an estimate of
 18 the relative size of Artesia's role in that
 19 alleged scheme.

20 Q. Let the record reflect you were
 21 reading from your report, is that correct?

22 A. Yes, sir.

23 Q. Did you, as you sit here today, do
 24 you have an understanding of why you were
 25 asked to do what you've just read?

Page 103

1 D. Larue

2 A. My understanding is that this was
 3 in connection with a civil suit brought by
 4 certain individuals against Dexia as
 5 successor to Artesia.

6 Q. Do you have any understanding as to
 7 whether or not any of what you were asked to
 8 do relates in any way to that civil suit?

9 A. Yes, I assume that the opinions
 10 expressed in this report relate to
 11 plaintiff's assertions or expected assertions
 12 in connection with that suit.

13 Q. And so your understanding of the
 14 relationship between your opinions and how it
 15 relates to the civil matter is your
 16 assumption about plaintiff's assertions,
 17 correct?

18 MR. BUTLER: Objection to form.

19 Can I hear that question again.

20 (Record read.)

21 A. Not all of these things that I've
 22 listed relate to plaintiff's assertions, but
 23 some of them do.

24 Q. Which relate to plaintiff's
 25 assertion and which do not and can you

Page 104

1 D. Larue

2 identify them by paragraph?

3 A. Paragraphs A and B, for the most
 4 part, provide a background for the opinions
 5 and descriptions that I've listed in
 6 paragraph C and I believe that these relate
 7 to plaintiff's assertions or expected
 8 plaintiff assertions.

9 Possibly also D.

10 Q. Okay. Possibly also D is
 11 background or relates to plaintiff's
 12 assertions?

13 MR. BUTLER: Object to form.

14 A. I don't know.

15 Q. When you say, plaintiffs, who do
 16 you mean?

17 A. At the time I prepared this report
 18 as a non-attorney, my understanding is that
 19 the plaintiffs were the individuals indicated
 20 on the cover of my expert witness report and
 21 my rebuttal report.

22 Q. And at the time you prepared your
 23 report, did you understand that all of the
 24 plaintiffs made identical assertions?

25 A. I don't know if they did or not.

Page 105

1 D. Larue

2 I'm not an attorney. I don't know how these
 3 kinds of cases are really conducted.

4 Excuse me, if I can clarify my
 5 answer. I will tell you, as a non-attorney,
 6 it has always been my correct or incorrect
 7 understanding that these cases were going to
 8 be litigated together and tried together, so
 9 I would assume that the assertions would be
 10 made in common for all four groups.

11 I may be wrong about that, but I
 12 think that was my assumption if I ever took
 13 the time to think about it.

14 Q. From reviewing your report, I
 15 understood that you reviewed the assertions
 16 of the class plaintiffs, is that correct?

17 A. You'll have to be clear. I don't
 18 know what you mean by class plaintiffs.

19 Are you referring to the class --
 20 are you referring to section 5?

21 Q. Let's go to -- let me mark as Larue
 22 Exhibit 4, a copy of your report.

23 (Copy of report of David Larue
 24 marked Larue Exhibit 4 for
 25 identification.)

27 (Pages 102 to 105)

ESQUIRE DEPOSITION SERVICES
 212-687-8010

2dfd6da5-8e66-4d39-80f9-bae02f49a691